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AN ETHICAL FRAMEWORK FOR PHYSICIAN INVOLVEMENT IN DETAINEE INTERROGATIONS

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ABSTRACT

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Scant literature exists which provides ethical guidance to physicians involved in interrogation activities of personnel detained during military operations. Recent journal articles have criticized the use of physicians in ways distant to the Hippocratic tradition. It is clear that physicians can and should be integrally involved in the traditional direct care role to insure the health and well-being of detainees. What is less clear is the use of certain expertise and skills of the physician in order to extract information from detainees of a military or security nature. This paper demonstrates that it is indeed morally sound to involve physicians as consultants and as observers, but not as direct interrogators. Patient care duties must be completely separated from the interrogation process. The purpose should only be to ensure that the dignity of the detainee is not being violated and that interrogation techniques protect that dignity. A method of analysis is introduced that centers around the concept of 'vulnerability' to clearly separate the professional requirements placed upon the physician through the Hippocratic tradition from the expectations placed on the interrogator, the military, or the State. Derivation from the Natural Law tradition as expressed in the Geneva Conventions is posited.

AN ETHICAL FRAMEWORK FOR PHYSICIAN INVOLVEMENT IN DETAINEE INTERROGATIONS

This paper examines the ethical implications of the use of a military physician's skills outside of the discipline of medicine[1] and in the area of interrogation to further the nation's security. At the heart of the matter is how American society defines what roles a military physician should serve in the morally effusive environment of conflict and war. The issue hinges on the ethical limits of the Hippocratic tradition in physician involvement with the war effort. The argument that will be posited illustrates that, by nature of the physician's role to protect those who are vulnerable[2], it is both moral and appropriate to involve physicians indirectly in the interrogation process as consultants and observers. Direct involvement as interrogators is incongruent with the Hippocratic tradition based on the differing natures of the positions – one to protect the vulnerable, the other to use vulnerability to one's advantage. Furthermore, consultant and observer activities that exploit individual vulnerabilities cannot be the foray of the physician. It is critical that the physician's activities at all times maintain the trust the profession represents to society. The dissonance between protecting the vulnerable and exploiting the vulnerable, even when the intent is to protect human dignity, forms the impetus for utilizing physicians to ensure and verify the humaneness of activities that easily can become dissolute.

The Natural Law tradition will form the objective framework and boundaries of the analysis, and thus will be outlined briefly. The Natural law will be placed in the context of inalienable rights (Geneva Conventions) and absolute wrongs (intrinsic evils). Elaboration on the Hippocratic tradition will provide a foundational discussion of medicine as a profession, and also provide a context for the obligation of the profession to the vulnerable, its accountability to the public as a profession, and its relationship to Natural Law because of its correct orientation to the proper and ultimate end of mankind (wholeness, supreme happiness, the Divine). Although this paper focuses upon the actions of physicians (normally generalists and psychiatrists), applicability extends broadly to all professionals in the field of medicine (mostly clinical psychologists) by their falling under the umbrella of the Hippocratic Oath through the physician. Mention of cultures that vary from the West will be made to contrast physician practice acceptable to those cultures, but at odds with Hippocratic tradition and western principles. Other ethical theories will be briefly mentioned to illustrate their inadequacy as stand-alone tools, based on fundamental deficiencies in their constructs which do not properly consider the full range of human nature integrated with society. Once a general framework under Natural Law is established, the analysis will examine the interrogation process in a

specific sense against the criteria of positive (i.e. civil) law, consent, protection of the vulnerable, and the potential for scandal.

The value in this analysis, more than insuring individual upright action, is to provide a standard by which leaders may properly request physician involvement. Orderly and honorable conduct is the desired result.[3] A historical context will begin the discussion to illustrate common physician involvement in non-medical activities, the role of societal acceptance of certain of these activities, and the challenges some of these activities present in backdrop of the Natural Law.

Background

Published Positions. Recent articles in notable journals of medicine have questioned the use of psychiatrists and psychologists as part of interrogation operations to aid in the extraction of actionable intelligence information from detainees in the global war on terrorism. At issue is the use of physician skills outside of the direct patient-physician care paradigm and in a realm where ethical abuses have tended to occur. An article published in the New England Journal of Medicine written by a collaboration of a physician-attorney and a barrister, laid a background to re-initiate the dialog concerning proper use of military health care professionals in the wartime setting.[4] An article published in January 2006 on the Global Security website outlines the discussions among major medical organizations on the issue of interrogation.[5] The American Psychiatric Association announced the intention to study the issue further, complementing an American Medical Association resolution to review the issue and delineate boundaries.[6]

The call for scrutiny of physician practice originates within the Hippocratic tradition as a means for debating and defining ethical behavior. Upon this long Hippocratic convention, the American Medical Association (AMA) codified a groundbreaking collection of ethical principles in 1847 during an era rife with quackery. The code established nationally accepted standards that ultimately led the western world. Although it did not address physician practice in a time of conflict, it indeed defined professional obligations to patients and vice versa, as well as physicians' and society's obligations to each other.[7] Since then, the AMA has promulgated standards to address numerous concerns, to include behavior in punitive environments. In 1999, the AMA released a statement prohibiting physician participation in torture, to include evaluating detainee health "so that torture can begin or continue", but supported the importance of continued medical treatment of detainees. The statement did not address the interrogation issue.[8]

The United Nations High Commissioner for Human Rights (UNHCHR) released principles of medical ethics for physicians working with prisoners. The principles forbade physician participation in torture in any way, and underscored the contravention for physicians to use their skills outside of direct patient care (Principle 3), and specifically, in interrogations, in a way that adversely affected the physical and mental health of detainees (Principle 4a).[9] In a previous general declaration issued in 1975, the UNHCHR addressed interrogations (Article 6).

> Each State shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty in its territory, with a view to preventing any cases of torture or other cruel, inhuman or degrading treatment or punishment.[10]

The World Medical Association (WMA) developed regulations for physicians in time of armed conflict and an International Code of Ethics. Both are mostly concerned with direct patient care. The Code affirmed, "I will not use my medical knowledge contrary to the laws of humanity, even under threat".[11] One of the regulations asserted as unethical the practice to "weaken the physical or mental strength of a human being without therapeutic justification" and also iterated, "Privileges . . . afforded to physicians and other health care professionals in times of armed conflict must never be used for other than health care purposes."[12] Both the Code and the regulation lacked clarity of context, but seemed to broadly apply to the interrogation issue. In further policy, the WMA presented a definition of torture and prohibited physicians from participating in any way. The policy did not specifically address interactions with detainees.[13] The policy further detailed a prohibition against feeding individuals who voluntarily refused nourishment (hunger strike). Of note, the WMA's principles mandated a consistent physician ethic, undifferentiated between war and peace.

> Medical ethics in times of armed conflict is identical to medical ethics in times of peace, as established in the International Code of Medical Ethics of the World Medical Association. The primary obligation of physicians is to their patients; in performing their professional duty, their conscience should be their guide.[14]

The World Organization of Family Physicians (Wonca) addressed physician participation in torture, genocide, political infringement on human rights, and terrorism, detesting these activities and imploring physicians to respect human rights for all people. Again, no specific mention of interrogation emerged.[15]

In vivid contrast to the statements above, the American Psychological Association condoned involvement and laid out clear ethical standards for psychologists involved in National Security matters, with specific mention of interrogations.

> Psychologists have a valuable and ethical role to assist in protecting our nation, other nations, and innocent civilians from harm, which will at times entail

> gathering information that can be used in our nation's defense. The Task Force believes that a central role for psychologists working in the area of national security-related investigations is to assist in ensuring that processes are safe, legal, and ethical for all participants.[16]

The statements above provide an array of positions on the aspect of handling of detained personnel. All of the major organizations listed abhor torture and abuse and proscribe physician collaboration, except to ensure the health of the detainee and prevent further abuse. The AMA, Wonca, UN, AAFP, and American Psychiatric Association do not address interrogation activities. The WMA seems to discourage all participation, even as a consultant. The American Psychological Association makes the clearest stance in support of ethical involvement of its members in the interrogation process.

Investigatory Panels and Reports. In the governmental arena, several official reports surfaced on the use of health care personnel in the interrogation process. The Schlesinger Report evaluating detention activities of the U.S. military expressed "the need for medical personnel to screen and monitor the health of detention personnel and detainees."[17]

A report to the Army Surgeon General by an independent panel evaluating operations toward detainees of Army Medical Department personnel recommended to "[p]rohibit all medical personnel from participating in interrogations. This included medical personnel with specialized language skills serving as translators."[18] The same report went further to state "[p]sychiatrists/physicians should not be used in a BSCT role," (Behavioral Science Consultation Team) but that psychologists and behavioral scientists could, with proper training.[19] The Army Surgeon General withheld approval of the recommendation rejecting the use of physicians (psychiatrists) in a BCST role.[20]

Admiral Church assembled a team of investigators to review Department of Defense (DoD) interrogation operations, at the request of the Secretary of Defense, Donald Rumsfeld. In his summary, he noted the absence of behavioral health specialist involvement in interrogations, but stated, "DoD-level policy review is needed to ensure that this practice is performed with proper safeguards, as well as to clarify the status of medical personnel (such as behavioral scientists supporting interrogators) who do not participate in patient care."[21]

Thus, expert opinion on health professional collaboration provides a broad perspective when dealing with the detainee issue, and reflects the complex nature of the combat environment. Comparable issues that push the professional role challenge physicians in all walks of life.

Examples of Non-medical and Ambiguous Use of Skills. Examples abound where physicians use their medical skills outside of the direct patient care role. Pathologists perform

forensics to aid in criminal investigations. Psychiatrists (and psychologists) are involved in psychological profiling for police work. (An example of another type of psychological profiling for understanding historical personalities can be found in a recent biography on COL Joshua Chamberlain by a psychologist.[22]) Physicians declare death for prisoners executed for capital punishment. Physicians act as expert witnesses in court cases. Physicians run for public office, where the daily decisions they make are non-medical, but much of their credibility in the public eye originates with their integrity within the Hippocratic tradition.

Physicians are called to engage in thorny and ambiguous situations, while performing in a way to bring respect to the profession. Thus, physicians perform ringside service in boxing matches, matches of extreme sports, etc., where the participants voluntarily subject themselves to assailment, and possible peril, for ends that probably do not justify the individual cost. Physicians bring health to prostitutes who voluntarily subject themselves to victimization in a debasing trade. Physicians push the envelope of healing and good, performing treatments and procedures on professional athletes to enable them to perform their sports with only partial recovery, and significant potential for further permanent injury. Physicians work with those under various addictions of drugs, sex, gambling, etc., people caught in a web of societal decay, profiteering, and dubious legalization efforts. Physicians care for smokers who voluntarily subject themselves to the known harmful affects of tobacco, while owning financial interests in the companies that profit from them. And so must physicians play a part in caring for prisoners. Prisons may fail to treat inmates with dignity. However, as individuals within this web, the physician's actions must always be to bring dignity to the humans served. It is not an easy task, and there persists the risk of improperly differentiating the ethical from unethical. Analogous challenges face all citizens in general, merely by being members of society.

By effectively engaging the populace, communities ascend to a more civil level. Failure to properly engage rightly creates scandal. Correspondingly, the public's apparent approval of an activity does not by necessity make the endeavor moral.

The public has well accepted certain medical practices which may, in fact, violate a physician's ethical obligation to do no harm (first do no harm, *primum non nocere*[23, 24]). The prescribing of medications or performing of certain elective procedures to otherwise able-bodied human beings (i.e. cosmetic (vs. reconstructive) surgeries, bariatric intestinal redirecting surgeries, diet pills, sterilizations, oral and parenteral contraceptives, erection medications, fertility evaluations and treatments) may challenge the moral mandate. Demands exist that pit the expectations of society against the needs of the individual. Triage and treatment of friend versus enemy in war, obligations to report communicable diseases to public authorities versus

obligations to patient privacy, use of psychotropic drugs for criminal interrogations, body cavity searches of criminals, and forensic investigations all present complex ethical challenges. How can a clinician successfully engage the complexities of societal life while meeting Hippocratic obligations? The internal tug to know the right path reflects an internal compulsion that leads toward vigorous discourse about the moral character of all human activities. Such discussion is noble and provides the impetus for dialogue about the specific issue of detainment operations.

Before considering the ethical implications of the military physician's role in the interrogation of detainees, a common reference to the past must be established of the classical role of the physician in Western society under the Hippocratic Oath, the importance of the Hippocratic tradition of blanketing all who engage in medicine within this society, and the proper position of the military physician to facilitate the humane treatment of those involved in the ravages of combat.

Hippocratic Tradition and Defining the Profession. The Hippocratic Oath forms the pivotal point in civilization for the practice of medicine, as it truly defined medicine as a profession. The impetus to distinguish an occupation by a publicly proclaimed oath supposed the needs to protect the vulnerable and to establish trust within the most essential aspects of society. The public sought protection against the tendency of humans to act fallibly and to promote self over others. Society esteemed certain values (life, liberty, justice, truth, health, salvation, happiness, and freedom) as too precious to entrust to the unguarded human nature.[25] Oaths formed a restraint by binding one's reputation to the wellbeing of the community. By raising the proclamation to the divine, not only could assistance be obtained to properly carry out core duties, but failure would be punished by the community, and ultimately by the Divine through the curse invoked by the oath[26]; the duties included law, public service, politics, military, medicine, and ministry, as well as sacred activities in society such as marriage, citizenship, and testimony in court[27]. Greek society originally required oath taking of its public officials, recognizing the edict "power corrupts" and power often tempted leaders to take advantage of the vulnerable citizenry for personal gain.[28] Several statements in the Hippocratic Oath poignantly demonstrated the advantaged position a physician possessed over others, a position exploited with significant frequency to necessitate becoming incorporated into the Oath: "Whatever houses I may visit, I will come for the benefit of the sick, remaining free of all intentional injustice, of all mischief *and in particular of sexual relations with both female and male persons, be they free or slaves*." (Italics added)[29]

The Hippocratic Oath formed a covenant[30] with society that bound those who practiced in its heritage. It specifically obligated practitioners of medicine toward lives dedicated to the

habitual practice of uprightness (virtue) as a means of strengthening resolve against the temptation toward malice. The Oath secured the community's confidence and trust in spite of pressures to do otherwise. Initiated by a small guild of devoted physicians, it set into motion principles that became the standard for medical practice several hundred years later.[31] From the small guild, the Oath spread to become the standard for western civilization. Laws and norms of medical practice originated from it, thus subsuming all oaths of obedience, codes of behavior, and principles of ethics that followed.

The ascendancy of these subsequent codes rests on the foundation of the Oath; successive guilds and associations owe allegiance to it, not necessarily to its specific words, but on the context and intent of the Oath.[32] Dr. William Osler, widely perceived as one of the fathers of modern Western medicine and the "preeminent clinician of modern times"[33, 34], implied the dominance of the Oath in an address to graduating Army surgeons. He extolled, "you owe allegiance to an honourable profession, to the members of which you are linked by ties of a most binding character . . . [t]he passports of your fellowship should be honesty of purpose, and a devotion to the highest interests of our profession . . ."[35] The legacy represented by the many medical fraternities throughout western history is based on the overarching dedication to the vulnerable and determination to uphold the trust; hallmarks embodied in the Oath. As the Oath saturates the norms of physicians practicing within its wake, so it encases all who practice health care.

The Hippocratic tradition has remained the basis for medical practice in the modern era, as attested by Dr. William Osler at an address given in Montreal to the Canadian Medical Association in 1902. Reflecting on the common views expressed at the time, while chastising the self interest and turf battles continuing to creep into the profession, he laid the underpinning of Western medicine with Hippocrates and his Oath, and boasted of its unbroken continuity of methods, ideals, and its "apostolic succession".[36] He closed by articulating the great hopes which society placed in the field of medicine for the advancement of civilization toward the "prophetic words of the Son of Sirach, 'Peace over all the earth'".[37, 38]

That "binding character" of medicine that unites physicians to the Hippocratic tradition, similarly encompasses all health professionals who serve under its mantle; the spirit of trust and protection of the vulnerable embody the patrimony. Even though this paper is directed at military physicians, no moral separation can be made between psychiatrists, psychologists, behavioralists, and other non-physician medical professionals educated in western society. Society ages ago elevated the legacy of Hippocrates to form the basis of western medical practice and all associated institutions. The trust of society revolves around this fundamental.

The scope of practice may differ, but all are riveted to the profession. The special status of captured health care personnel as retained personnel under the Geneva Conventions reflects this truth; the current application of the Conventions rightly does not make a distinction between clinical specialties.

Physicians maintain two levels of obligation: responsibility to patients and accountability to society. It cannot be either/or, nor can it always be patients over society or vice versa. Physicians owe a debt to the society that allowed them to attain training, skills, and certification. As citizenry, physicians have the normal obligations to society as any other individual. All citizens within civil society must use their skills in ways that build up the society and protect it from destructive forces within and without.[39] By nature of being a physician, society supports the physician's premier responsibility to the patient. In a likewise manner, society and patients have duties and responsibilities toward physicians, their health, and society's well-being.

The military physician, along with responsibilities of citizenship, is bound by two professions. Both professions are obligated by oath. Both require allegiance. The nation has clearly determined that the profession of medicine takes precedence, but not preeminence. This preference is consistent with Natural Law, which elevates that profession most closely linked to the 'end' of man, but uniformly requires conformance to all responsibilities and obligations when there exists no conflict regarding that end. Since illness and mortality are intrinsic to life, and do not require established social networks to afflict man, obligations to health come before group security and society, and thus before the military obligations. The seeking of health is one of the basic rights of mankind, and healthy societies depend on healthy individuals, as do functional militaries.[40] Yet as iterated previously, formative physician education and training depends upon a functional society. Duties are interwoven. Further elaboration on the role of the military physician as it pertains to the topic of this article will be made.

Role of Military Physician. Military physicians have traditionally played a diversity of roles in war, from direct patient care to advising commanders on issues surrounding the health and well-being of troops. Involvement in the health, care, and welfare of refugees, local populace, detainees, criminals, and prisoners of war are also a part of the military physician's duties. Military physicians, as all physicians, have a primary duty to medicine[41], the prevention of disease, relief of suffering, and healing of the sick.[42]

So where on this spectrum does physician involvement in the interrogation process fall? There are a variety of potential ways in which physicians (both general practitioners and

psychiatrists) may utilize their skills to obtain information from patients or assist in the detainee management.

a. Training and advising interrogators in interview techniques.[43, 44]

b. Observing the interview process and providing critique to the interrogator on further ways to ask questions to elicit information.[45, 46, 47]

c. Participating on Behavioral Science Consultation Teams.[48, 49]

d. Participating on Detainee Health Care Teams (Medical Safety Oversight Teams)[50, 51]

e. Interviewing detainees directly (theoretical, not documented as ever practiced).

f. Utilizing language skills and interpreting for interrogators.[52]

g. Constructing interrogation plans.[53]

h. Examining interviewees before, during, and after the interrogation session to validate health status.[54]

i. Observing coercive and tortuous practices as they are occurring.[55]

j. Performing directed body cavity searches on detainees.[56, 57]

k. Inserting nasogastric tubes into hunger striking detainees.[58]

Examples involving the physician in a patient care role are not the subject of this paper, although direct medical care is an important aspect of humane treatment of detainees.[59] Each of these situations presents issues worthy of in-depth ethical analysis. The focus of this paper will center on those non-clinical activities related to interrogation and/or detention.

Official Policies, Regulations, and Written Guidance. A number of documents govern the management of detainees within the U.S. military, and provide example of the stringent mandate to conduct all operations in a moral manner that protect human dignity.

> American Personnel are required to comply with all U.S. Laws, including the United States Constitution, Federal statutes, including statutes prohibiting torture, and our treaty obligations with respect to the treatment of all detainees. The United States also remains steadfastly committed to upholding the Geneva Conventions, which have been the bedrock of protection in armed conflict for more than 50 years. These Conventions provide important protections designed to reduce human suffering in armed conflict. We expect other nations to treat our service members and civilians in accordance with the Geneva Conventions. Our Armed Forces are committed to complying with them and holding accountable those in our military who do not.
>
> - President George W. Bush, March 2005 [60]

In September 2002, “[s]ustained by faith in the principles of liberty, and the value of a free society” along with its “unparalleled responsibilities, obligations, and opportunities”, President Bush outlined his strategy for America, listing his goals for the nation. He then formulated six

methods of achieving those goals, one of which was to "champion aspirations for human dignity."[61] In his opening remarks, he pointedly stated, "only nations that share a commitment to protecting basic human rights and guaranteeing political and economic freedom will be able to unleash the potential of their people and assure their future prosperity." [62]

In a press conference held by the White House Press Secretary, Mr. Ari Fleischer released the President's position on the treatment of Taliban and Al Qaeda detainees.

> Today President Bush affirms our enduring commitment to the important principles of the Geneva Convention. Consistent with American values and the principles of the Geneva Convention, the United States has treated and will continue to treat all Taliban and al Qaeda detainees in Guantanamo Bay humanely and consistent with the principles of the Geneva Convention.[63]

One of the foremost interrogators of Japanese prisoners of war in World War II wrote a memorandum that forms the centerpiece of interrogation operations in the U.S. today. In it, he described the need to discard the use of the term interrogation, because of its association with coercion, and instead, inculcate the practices of interview.[64] He noted the importance of protecting the human dignity of the person being interrogated in order to gain the trust of the individual.

FM 27-10, Law of War (1956/1976), specifically states, "No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever."[65] The Law of War included the experiences of both WWII and the Korean War.

FM 34-52, Intelligence Interrogation (1992), is the Army's manual that outlines correct interrogation procedures. It defines and describes interrogation as ". . . the process of questioning a source to obtain the maximum amount of useable information."[66]

> The goal of interrogation is to obtain reliable information in a lawful manner, in a minimum amount of time, and to satisfy intelligence requirements of any echelon of command. . . A good interrogation produces needed information which is timely, complete, clear, and accurate. An interrogation involves the interaction of two personalities – the source and the interrogator. . . Other forms of intelligence interrogations include interviews, debriefings, and elicitations. There are certain principles which generally apply to all types of interrogations; namely, the objective, the prohibition against use of force, and security. [67]

Furthermore, FM 34-52 states "The GWS, GPW, GC, and US policy expressly prohibit acts of violence or intimidation, including physical or mental torture, threats, insults, or exposure to inhumane treatment as a means of or aid to interrogation."[68] The manual makes it clear that torture and coercion are not only illegal, but also ineffective means of obtaining information, and

have no place within the means of the interrogator. The field manual specifically cites the 1949 Geneva Conventions as advancing the central tenets to be emulated.[69]

In October 2005, an outside team of civilian physicians traveled to Guantanamo Bay Detention facility to evaluate the medical environment. A member of the team penned an article that corroborated a similar ethic to that portrayed by the military field manuals, stressing the importance of establishing rapport with the detainees and avoiding any forms of torture or coercion.[70] Such findings reaffirmed the practical application of the written policies and confirmed the importance the staff attaches to conducting operations consistent with moral mandates. The staff ensured American society gains meaningful security from the information obtained in a right manner.

It is clear from the words of the President of the United States, from the ample written guidance, and to the convention actually practiced, that there resides a consistent dedication toward right conduct and human dignity. These references form a continuity of thought forged in the heat of a classic force-on-force war (WWII) and adapted for the current irregular war. An examination of the current unconventional environment is warranted.

The Non-Traditional Threat. The issue of interrogation operations centers upon the detention of suspect personnel associated with the Global War on Terrorism; and mostly those persons claiming to be a part of Al-Qaeda, or with similar intent, as outlined in various writings and internal and external publications.[71] There is a clear duty, among citizens of classical nation-states, to preserve the State.[72] America is such a nation-state, in the classic portrayal by the majority of ethical writings. In contrast, Al-Qaeda lacks connection to any nation in the geographic sense, yet envisions possession of a future homeland in order to realize the full flowering of its belief system and world view. Al-Qaeda's intent toward destruction of the Western way of life is clearly delineated in its writings [73]. It has proven its willingness to use violence against America, culminating in the attacks on American soil 11 September 2001. In this milieu, persons are legitimately being retained for questioning and detained for information and security reasons.

Nonclassical Ethics. A discussion focusing on the Islamic background of the belligerents elucidates further differences between cultures, in contrast to the universal norms of western medicine. Not all societies reflect the values and commitment expressed by the President and American military directives. An article by the Professor Michael Gross contrasted the challenges faced by physicians in societies led by fear, terror, and coercion.[74] He provided examples of "decent societies" (versus liberal states) that are stable and governed by the rule of law, normally peace loving, generally tolerant, but practice activities abhorrent to

medical communities in the West, such as amputating the limb (hand or foot) of a criminal according to Muslim (Shari 'a) law (Hudud offences) or compelling physicians to participate in torture. He shows how such stringent practices of justice may stabilize particular societies, and be sacrosanct within such communities. The author concluded that cultural values in which physicians are raised, indoctrinated, and schooled may be accepted and internalized, leading the physician to comply and perform acts contrary to values rooted in Christianity. The implication Dr. Gross drew is that a physician may be able to act morally within such a framework. Such a view runs divergent to the system endorsed by the President of the United States and articulated in this paper – the existence of universal standards applicable to all and the principle of inalienable rights embedded in the United States Declaration of Independence and the U.S. Constitution.[75] A closer look at these inalienable rights as they apply to detainees is warranted.

Detainee Rights, Inalienable Rights. The Geneva Convention of 1949 dealt with the question of basic rights in great detail as it contemplated reprehensible behavior following the hostilities of WWII. It delineated that all should be "treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any similar criteria." It outlined acts that "shall remain prohibited at any time and in any place whatsoever". [76]

a. violence to life and person, in particular murder of all kinds, mutilation[77], cruel treatment and torture.

b. outrages upon personal dignity, in particular humiliating and degrading treatment.

c. the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

d. the wounded and sick shall be cared for.

[Although further criteria were outlined in 1977[78], the United States became a signatory on 2 August 1955, and has not ratified further protocols.[79]]

Inalienable rights define and secure the essentials of human dignity for those whose liberty has been suspended; in contrast to the additional rights inherent to free citizens (which allows freedom of movement and freedom of expression). Inalienable rights shield the body from intrusion, penetration, or physical violence. They provide limited self determination and decision making (i.e. informed consent – in the case of combatants, consent is implied and expressed beforehand by the choice to engage as a combatant[80]). They secure those basics that preserve life, maintain bodily health and integrity, and protect personal safety.

The importance of inalienable rights cannot be overstated, as these rights dictate the minimum standards for human dignity, regardless of the culture. They secure proper treatment of the individual deprived of certain privileges as a result of hostile intent or action against a legitimate nation. Simultaneously, compliance with them secures the dignity and humanity of the captors through honorable treatment of detainees solely based on membership in the human race, attesting to the worth of mankind even when forces converge to degrade that worth. Such activities elevate society, make it civil, and countenance the very basis of the Natural Law tradition.

The overview and explanations of Natural Law and virtue that follow may be skipped without greatly diminishing the understanding of the analysis section. The synopsis that follows provides introductory detail justifying the usefulness of Natural law as a framework in this analysis deriving out of it being the basis for Western law, the Geneva Conventions, and philosophy since antiquity. The concept of virtue forms the mortar that binds society to enable attainment of higher levels of civility and justness.

Overview of Natural Law theory. "The morality of acts is defined by the relationship of man's freedom with the authentic good."[81] A cliché nuanced frequently among military leaders reflects this, "Nobody consciously wakes up in the morning saying 'I aim to join a second class organization and strive for mediocrity.'"

People are drawn to the good, even when their perception of that good may deviate from the values of those around them. This drive toward the good is intrinsic to being human. This visceral inclination impelled leaders throughout history to formally study the moral character of acts and label them as good or bad. This proclivity is the defining characteristic of being rational, and thus, human. It is synonymous to human nature.

Natural Law is Universal. The Natural Law is the universal and unchangeable tendency of man, based on reason, to seek and do good and avoid evil, harmonizing man's interests with society's. It is important as a *framework* for analysis as it defines good[82] in human acts[83], and distinguishes good acts from acts opposed to proper human ends[84]; it claims universal application for all times, places, and cultures; it rightly orients acts of individuals to the good of society; it explains right human activities in the absence of positive law; and, it orients toward a supreme being without the need for specific revelations of religion and theology. [85]

Key to understanding Natural Law in contrast to many popular ethical theories is the profound meaning in the very notion of man possessing the ability to analyze and act as a thinking, rational being. This capacity separates him from the beasts. It drives certain conclusions about the nature of man: that man did not cause himself, but is contingent upon

something before him[86], a first cause; that man exists within a hierarchy of truth that includes absolute good and evil; this truth determines his being (metaphysics)[87, 88], his orientation (teleology)[89, 90], and his actions as man (morality)[91]; and that he possesses a will and intellect which prompt subordination of his material self in a harmonious manner befitting that which caused him as a reasoning organism within society.[92] The certainty of Natural Law can be attested by man's perpetual search for truth, man's unending need to make the right choice in order to gain the maximum fulfillment, and the commonality in man that certain behaviors are absolutely wrong at all times, in all cultures and societies, and in all circumstances (adultery, torture and killing of the innocent) and absolutely right at all times (children respecting their parents, parents rearing and educating their children[93]).[94, 95, 96]

Natural Law tradition posits the ability of humans to determine right from wrong in this universal sense. Natural Law hinges on understanding that the proper 'end' of human activities in an overall sense must be a balance between the needs of the individual and the needs of the public.

Definition of Natural Law. The primary principle of Natural Law can be encapsulated into a simple statement[97], to "do good and avoid evil", originally formulated by St. Thomas Aquinas as "good is to be done and sought for, evil is to be avoided".[98, 99] It is "nothing but the dictates of reason properly exercised."[100] *Natural Law* must be distinguished from the *Laws of Nature*, the former of which derive from philosophical studies, the latter which originates in scientific observation measured consistent occurrences such as the effects of gravity, the speed of light travel, the instinctual behavior of animals. The Natural Law tradition is seen explicated in the Hebrew Ten Commandments and Roman Catholic teaching, and variously in classical Greek teachings of Aristotle, Plato, and the Stoics, Roman law, and western society. Significant portions of American law are based upon the natural law tradition[101], to include the Constitution of the United States and its Bill of Rights[102] and the Declaration of Independence[103]. Furthermore, the US is a signatory to the 1949 Geneva Conventions, which is heavily based upon the Natural Law tradition.[104]

Limits of Natural Law. It is the profundity of this simple formulation that complicates the application of Natural Law to the intricate predicaments of daily life. Natural Law provides the *framework* within which the rightness of an act is determined, but is inadequate to be employed as a tool to distinctly determine the fitness of many common acts or to solve all problems.[105] The framework established by Natural Law originates in those judgments known to mankind about actions that are intrinsically wrong or intrinsically good.[106, 107] One aspect is of natural law

is justice, i.e. “an eye for an eye and a tooth for a tooth”[108]; another is mercy, “[d]o to others as you would have them do to you.”[109]

The Ten Commandments[110] have traditionally been viewed as the full flowering of Natural Law, but once again the numerous nuances in their application discourage those who try to apply them to daily life (i.e. do not kill, but not all killing is wrong – thus, more aptly stated as do not murder). It is through positive law framed by the Natural Law that societies formulate civil code (civil law) within which members of those societies must properly abide. A challenge is for people to separate those precepts which are etiquette, specific to culture, and those which are universal mandates for governing proper conduct.

Natural Law orders man’s activities toward a perfect good that brings about the happiness[111], wholeness, and completeness of both the individual and society governed by positive law. It dictates in conscience that to do other than the good is wrong, and even destructive. One’s free actions must integrate with one’s duties and responsibilities.

Other Theories and their Inadequacy. The difficulty to apply Natural Law specifically to common problems has lead to great criticism of its utility, much originating from philosophers since the beginning of the Enlightenment (1700’s). In their attempts to fill the gap and establish theoretical methodologies to guide human conduct and day to day decision making, they formulated a variety of ethical models, which reduced natural law to another of many theories, and eventually attempted to replace it completely (i.e. intuitionism – subset in Scheler’s phenomenology; Moore’s intrinsic value, utilitarianism – subsets hedonism and the pleasure principle, altruism; Kant’s autonomous reason; those ideas about human social constructs such as Marxism, Nirvana; and other systems such as deontology (duty first), situational ethics, value ethics, pragmatism, consequentialism, proportionalism, teleologism).[112] Many of these constructs have gained wide followings, even up to current times, but all have been proven incomplete.[113, 114] Each of these theories contains some element of usefulness, and form particular aspects of human decision making, but must always be measured within the framework of absolute truth to avoid discrediting the essential activity of human reasoning.[115, 116] Man is defined by his human nature. Integral to that nature is the ability to reason; inherent in that nature is his quality as a contingent being. Man cannot cause himself, did not create his existence, and cannot be his own end; he depends on a source outside of himself for all aspects of his being. Any theory is philosophically deficient when it ignores the reality of man’s contingence, diminishes the importance of a knowable hierarchy of truths, or misunderstands the deeper meaning of the common orientation of man’s activities in general toward an objective hierarchy of goods.[117] (118, 119, 120, 121, 122, 123, 124, 125, 126, 127)

Essentialness of Virtue. A discussion in ethics cannot take place without a discussion about virtue, the inclination to act in accord with rational nature (i.e. our human nature).[128] "It is the disciplined, perfected ease of acting as a reasonable man. It consists of those habits of mind and will which enable one at every turn to do good and avoid evil."[129] Good acts are the product of virtue; evil acts are the product of vice.[130] Greek thought provided four main categories of virtue[131], under which the innumerable forms of virtue can be categorized: prudence, temperance, fortitude, justice.[132] In order to maintain the balance of societal needs versus those of the individual over the long term, Natural Law depends on instilling citizens with a sense of virtue; the habitual practice of traits that build rather than denigrate humanity.

A military life centered around and consistent with the Army values [133] will promote virtue-centered activity. The Army Medicine core values [134] add a further layer of traits required of military health care providers. This author notes three other attributes important for physicians, which are implied in the former lists and worthy of mention: humility[135], sacrifice[136], and patience. [137]

Background Summary. Discussion surrounding physician involvement in interrogations surfaced with public scrutiny of the issue by a number of authors and organizations. Their opinions reflected an array of consensus viewpoints and formed a stimulus for ethical analysis. Official guidelines, policies, and public statements demonstrated a consistent concern for the protection of human dignity at all times. A review of common physician activities demonstrated a range of pursuits that potentially compromised the Hippocratic decree and provided a context against which to compare the military physician role in interrogations. A number of these activities blurred the traditional lines of morality, emphasizing the inherent complexity in defining moral physician behavior. A review of the basis of the Hippocratic tradition of establishing public trust and protection of the vulnerable provided historical example of the physician prerogative as a profession and contrasted with the requirements of the interrogation process to exploit vulnerabilities, albeit in a humane manner.

The precedence of the Natural Law as the scaffolding for western thought and legal sanction made it a fitting choice for this analysis. The preceding examples reflected the genuine commitment to human dignity within the military system, starting with the U.S. President and descending to those involved directly with detainees. These examples centered on the Geneva Convention of 1949 as representing the minimum principles for safeguarding human dignity. A consistent path reinforced the official practice and policy of the U.S. to treat detainees humanely and with dignity at all times, from the top leader of the nation[138], from the leaders involved within the major detention center in this conflict[139], and from the interrogation manual itself. The

copious documentation in FM 34-52, the manual for interrogation, vigorously declared the ineffectiveness of coercion, prohibition of torture, and the proper behavior expected. Even in the face of personal indiscretions, this continuity further validated the proper orientation of the system toward preservation of human dignity and ultimate conformance with the Natural Law.

Having established this background, it is important to begin a specific analysis of the issue of physician involvement in the interrogation process. The purpose of this analysis is to portray how leaders should weigh the act in general for broad staffing decisions. Focus upon specific individual violations will be avoided.

The line of argument will dissect the interrogation process into its components to show their individual compliance to morally acceptable ends – the validity of interrogation as a legitimate 'means' of obtaining information which will serve the ultimate 'end' of preservation of State, and the licit function of the well trained interrogator in facilitating that process. Important to the analysis is that the interrogation process be conducted properly according to the published regulations which unswervingly declare the essential role of protecting human dignity. The activities of the physician will then be examined in both the theoretical role of interrogator, and the realistic roles of consultant and observer. The proper ends of each of these activities will be measured against the necessary ends enshrined in the Natural Law of securing human dignity, complying with the law, protecting the vulnerable, avoiding scandal, and preserving the State.

Analysis

Physician involvement in the interrogation process will be dissected into its component parts: the interrogation process, the interrogator, and the physician as interrogator and/or consultant. The activities will be evaluated overall for their general conformance to the Natural Law, and to their specific status in relation to positive law, policy, or consent. As appropriate, the process will be examined in light of obligations to the State, obligations to the profession, obligations to the vulnerable, and obligations as an individual. The determinate of moral rectitude must be the intent, the means and the end directed toward the ultimate human good in general, and human dignity in specific.

Vulnerability of Detainees. It is important to address the freedoms diminished by detainment, and how captivity obligates physician behavior even in the absence of a physician/patient relationship with the detainee. By its very nature, captivity spawns the condition of 'vulnerability'[140] in the detained person. It does this through diminishing individual freedom of action and creating a state of dependency; the detainee relies upon the captor for

safety and security, basic sustenance, and guarding of inalienable rights. The detained person is subject to the external demands placed by the captor, to include limitations of freedom of movement, freedom of speech and expression, etc.

The measure of individual freedom correlates comparably with the ability to exercise duties and responsibilities to ensure that freedom. The most basic form is that of maintaining one's essential wellness. For example, the detainee is unable to ensure his own physical security and control, a basic human responsibility, thus obligating the captor to establish those conditions.[141]

Captivity serves as a licit means of the State to "strip the enemy of the means of future aggression . . ."[142], as well as procure information important to preservation of itself. Therefore, the tendency of the State is to use the dependency and vulnerability of detainees to its own advantage. This is contrary to the demands of the health care profession, which is to diminish that vulnerability, especially in the sense of overall health and wellness.

'Vulnerability' is the pivotal concept that distinguishes how the physician executes his obligations to the state and how the interrogator executes his obligations to the state. 'Vulnerability' forms one of the key precepts of analysis used in this paper. All personnel are obligated to protect human dignity in perpetuity. In capitalizing upon vulnerabilities, the State places itself at inherent risk for violating detainee basic rights as a human, a pathway difficult, but possible, to walk morally. The physician, in contrast, must never manipulate vulnerability, as it runs contrary to the Hippocratic Oath.

Evaluation of interrogation. A moral evaluation of interrogation is necessary. The word 'interrogation' is differentiated from a simple 'interview' through its connection to detention and the fundamental reduction of certain individual freedoms. The intent of interrogation is to obtain actionable intelligence. The 'means' is the interview. The 'proximate end' is actionable information – intelligence. The 'ultimate end' is preservation of the State. What keeps the activity morally acceptable is the preservation of human dignity at every step. Based on the information discussed earlier in the paper, it is clear that the intent of the State (the U.S.), and the military as an arm of the State, is to protect and promote human dignity at all times. Thus, it can be stated that interrogation, conducted by agents of the United States, is a licit means, when conducted in accordance with policy.

The Schlesinger Report views interrogation differently, stating that "[e]ffective interrogators must deceive, seduce, incite, and coerce in ways not normally acceptable for members of the general public. As a result, the U.S. places restrictions on who may be detained and the methods interrogators may employ."[143] However, close examination of U.S.

policies, regulations, and manuals governing interrogation greatly limits deceitful and coercive activities, and demands that human dignity be protected at all times in order to avoid semantic arguments into what constitutes coercion, deception, etc.

Evaluation of the interrogator.

> Findings of social psychology suggest that the conditions of war and the dynamics of detainee operations carry inherent risks for human mistreatment, and therefore must be approached with great caution and careful planning and training.[144]

This statement advanced in the Schlesinger Report illustrates the grave responsibilities placed on interrogators to conduct themselves in a manner conducive to U.S. stated policy and goals. Properly carried out according to standard, interrogations are really a form of skilled interview. Interrogators must avoid coercion, and abhor torture or practices that violate human dignity. Thus, training and experience for this occupation must be extensive to minimize the risk of human mistreatment. In such an environment, the occupation of interrogator is morally licit.

Evaluation of physician direct involvement. In a logical sense, since the process of interrogation, properly conducted, is morally sound, and the occupation of interrogator, well trained and skilled, is morally acceptable, it would seem that a physician should be able to participate in interrogation. This question is posited as the most extreme of possibilities in the use of a physician.

In the ethical sense, the direct utilization of a physician in the interrogation is not sound, even when carried out rightly, and fortunately not practiced. American society has chosen to exclude physicians from the direct interrogation role. Although physicians are skilled in interview techniques, they are not necessarily well versed in the specific skills requisite to effective interrogation. Furthermore, as illustrated by the quote from the Schlesinger Report, the risk of human mistreatment is inherent. A legal reason, based on U.S. compliance with the Geneva Conventions, will also be advanced later in the analysis.

However, more specific to this issue, the very nature of the profession of medicine is incongruent with direct involvement as an interrogator. Physicians, by oath, are to protect the vulnerable (patients) and avoid any chance of taking advantage of them. Detainment makes persons vulnerable, as described above. Interrogators use that vulnerability to their advantage. Even though practiced uprightly and licitly, by its very nature the practice runs contrary to the profession of medicine.

A society that accepts the Hippocratic tradition as the general standard for physician behavior binds practitioners to a profession dedicated toward healing, reduction of suffering, and promotion of human worth and dignity at all times. The oath binds the practitioner directly

when performing clinical activities, and indirectly in all activities of life. A significant aspect of the Hippocratic tradition is living life uprightly toward the ends consistent with being a physician – providing care that brings wholeness in a selfless manner to fulfill patient trust. The impetus for guilds of physicians to obligate themselves by oaths, codes, etc., enabled them to convincingly and publicly pronounce their separation from unscrupulous medical practice and temptations to take advantage of patients for personal gain. Whether it entailed the selling of quack medicines, the performing of magical treatments, or the pandering of unproven antidotes, an economic drive could easily supersede the innate constraints to protect a people vulnerable to such shenanigans.

Despite disagreements about the substance of codes and oaths, the underlying principle that unites all under Hippocrates is the protection of the most vulnerable. The principle necessarily extends to all facets of the physician's life, through practice of virtue, in order to maintain the public consistency of ethic that begets trust.

The careful interrogator indeed seeks ends that are morally licit, but remain inconsistent with the ends required of physicians on or off duty. The proximate end of interrogation is useful intelligence to further combat needs. The proximate end of physician behavior is human dignity through wellness and wholeness. When carried out rightly, the difference may be perceived as subtle. When abused, the difference manifests clearly. Society has correctly chosen to protect the institution of the physician in the public eye. Furthermore, lapses in interrogation are much less damaging to the occupation of interrogation than they are to the occupation of medicine. This analysis should in no way be misconstrued as degrading the occupation of interrogation. It is simply a different mission that American society has relegated to a specifically trained person in order to safeguard the institution.

Evaluation of physician indirect involvement. An important role can be played by physicians as consultants, achieving consistency with the goals of medicine while facilitating the proper conduct of the interrogation process and assisting commanders. Potentially, physicians may both observe and train interview techniques while avoiding direct involvement in the interrogation. Since, by Oath, physicians must protect the vulnerable, interview skills and observation must by utilized in a way that protects the dignity of the detainee. The techniques may provide a useful addition to the interrogator's repertoire by further ensuring a humanely conducted interview. Nonetheless, the most effective training for interrogation will be conducted by skilled and experienced interrogators, steeped in ethical controls, teaching each other. Physician consultants would only provide a varied perspective for obtaining information.

There remains a tendency within commanders to want to use physicians as consultants and observers to exploit the vulnerabilities of detainees. Such usage obscures the line separating the physician's inherent duties toward the vulnerable. The Geneva Conventions establishes the special status of medical personnel, recognizing a combatant status untenable with the sworn tenets of the medical profession. This precedent enables care to be rendered during captivity, alleviating captor fear of malicious intent.

The direct patient care role of the physician must be separated in time, place, and person for a number of reasons. The potential for health care information to cross over into the non-clinical responsibilities of consultation could create a conflict of interest. Certain aspects of confidentiality that should be guarded could be violated. The physician's primary duty toward patient care might diminish in priority when placed against the time-sensitive nature of interrogation demands. Physicians involved as consultants, or as participants on non-clinical teams, should not perform any detainee medical care.

Evaluation of physician as translator for interrogator. The adept translator correctly assesses the intent of what is being said, and recalls it into the language the others can understand. Such an activity makes the translator an extension of all individuals for whom interpretation is required. There is a risk for favoring the one upon whom the translator's well-being is most closely connected. If the intimate connection is toward the interrogator, the physician may be at risk for inadvertently taking advantage of the vulnerable detainee. By potentially placing the physician at odds with the Oath, it is recommended that physicians not be used as translators for interrogation. Thus, although translating is not unethical in itself, the chance for behavior contrary to the standards of the profession is too great to be given a clear endorsement.

Legal demands. The combatant status of those in the medical profession and those in the interrogation process differ. Involvement in interrogations may violate the physician's protected Geneva Convention status. The Geneva Convention only protects medical providers in the clinical role – that of direct patient care. When captured in that role, they are retained personnel. Involvement in the interrogation process is a non-clinical role that potentially may place physicians in the status of combatants, especially when serving directly as interrogators. It is uncertain what the legal status of physician consultants and observers would be. This analysis would support that they remain clinicians, since the weight of their involvement depends on the integrity provided by their membership in the medical profession. Although no physician/patient relationship is established, a physician/vulnerable-person affiliation may generally remain. The legal system may view this differently, especially in ascertaining specific

cases of conduct that may violate such a distinction. Indeed, if Geneva Conventions status is compromised, then the ethical matter becomes clearly prohibited, as it is unethical to break a legitimate law of one's country (i.e. The U.S. stated policy of adherence to the Geneva Conventions of 1949).

Consent. Appendix H of the Schlesinger Report delves into the ethics of detainee operations. The concept of consent forms its basis of discussion on detainee ethics. Prisoners are said to have consented to detention by "not respecting the rights of others."[145] People do not become combatants, terrorists, or insurgents without accepting the possibility of capture, detection, interrogation, or death, and the subsequent handling and treatment that results.[146] The Report goes further to use a "minimal harm rule", where certain techniques for interrogation are permissible as long as permanent injury is not caused, and thus constitute torture. Grave circumstance dictates the level of force and coercion that may be applied for situations where the timeliness of information is paramount.

The Schlesinger implied consent standard only addresses the ethical nature of interrogations in general. The analysis in this paper does not use consent in the same manner, and does not comment on the "minimal harm" rule.

Scandal.

> To prevent scandal or immediate co-operation in another's evil act one is forbidden to do various things innocent in themselves. To proceed to do them is to be guilty of wrongdoing.[147]

As previously explained, involvement in interrogations does not run contrary to the Natural Law, which promotes activities that preserve the country while promoting human dignity. However, the potential for scandal may be another factor which could ultimately influence any determination limiting physician participation. Scandal induces another toward wrongdoing through one's wrong actions.[148] In regard to the profession, the wrongdoing associated with detention operations and physician involvement could be perceived as a detriment to public trust in the profession. American society, through the legal system, will ultimately decide if the risk is too great. However, from the ethical perspective, there is no real scandal since participation as previously outlined is morally licit.

Other areas of Possible Involvement. Page 9 lists a number of areas of potential physician involvement, each amenable to in-depth ethical analysis. As the focus of this paper is on the interrogation process specifically, the other topics provide thought-provoking material for future digestion.

Conclusion

This analysis evaluates the interrogation process from the context that the proper policies and procedures issued from the President, through the military hierarchy, are being followed. It is evident by the significant media dialog that breeches do occur, bringing an unfavorable light upon all. Demands placed on military health care professionals may frequently push the moral envelope. Nonetheless, the foundation of this analysis is solid, and provides a firm basis for proper moral behavior. The military physician can play a meaningful role in assuring moral conduct as long as the dedication to the Hippocratic tradition of protecting the vulnerable and preserving the trust is maintained.

> The tension between the role of the physician and the role of the uniformed service member at times is not discernible; at other times its presence weighs heavily. We contend that this is good, indeed essential. Without this tension there is the very real risk of medicine in the service of the State – medicine that first and foremost views the whole group as the patient. The tension between the professions of medicine and arms is therefore desirable and must be maintained. There is a benefit in the "dis-ease" that military physicians may experience. It helps them to maintain perspective and to deliver the best care possible for their patients.[149]

This tension is basic to mankind in his relationship to society, and takes on different dimensions dependent upon one's role in the community.[150] The problem of the physician's involvement in the interrogation process is at its core a conflict between duties to the profession as a caregiver versus those duties to society to which the physician also owes certain loyalties.

Since conduct of interrogations during conflict is a necessary means of obtaining information to the aid of society, the process itself is moral when conducted appropriately, and thus the person conducting the interrogation can gain reassurance. Yet, the nature of the interrogation process makes it contrary to the direct health care role of the physician. The relationship between the detainee and the interrogator is frequently adversarial[151], in contrast to the beneficent relationship of the physician to the patient or the public. To reiterate the Schlesinger Report,

> Although interrogators are trained to stay within the bounds of acceptable conduct, the imperative of eliciting timely and useful information can sometimes conflict with the proscriptions against inhumane or degrading treatment. . . The conditions of war and the dynamics of detainee operations carry inherent risks for human mistreatment and must be approached with caution and careful planning and training.[152]

This paper has shown that involvement of a physician in the interrogation process as a consultant or observer on proper interview techniques is indeed ethical when the goal is to protect human dignity. Yet, in practice, it may be too difficult to remain within a moral context.

Physicians in such situations must bring such concerns to light and take actions to return to a moral footing. The *intent* of the activity is paramount in determining the morality of the act, and must be clearly understood. Yet, if the activity may be easily misconstrued and result in scandal, participation in it must be carefully scrutinized.

Any experienced interrogator can teach interview techniques and observe their proper implementation more effectively than a physician. Furthermore, interrogation experts habitual in the practice of virtue and accustomed to securing human dignity can insure that both the training and the conduct of the interview do not violate the basic human dignity of the detainee. The physician adds little to the equation, except the reputation of objectivity and integrity afforded by the Hippocratic Oath. The Oath signifies a dedication to the intentional practice of virtue as a prerequisite toward sound and moral decision making. The physician that insures proper training and utilization of interview techniques applies his skills in service of human dignity. That physician would be behaving in manner consistent with the natural ethic of the profession of medicine.

The physician role cannot extend to the practice of direct interrogation, as the goal or intent of such an activity is at odds with the profession of medicine. It is true that the interrogation process, properly carried out, is not an immoral activity within itself, and both fields desire to protect human dignity. However, the profession of medicine based on the Hippocratic tradition guards the vulnerable while detention capitalizes on the vulnerability. Furthermore, it may be potentially unethical for the health care person to be involved through violation of civil law (the law of the State) through contravention of the Geneva Conventions. The Conventions explicitly define the special status of physicians, if captured, as retained personnel, only in relation to the physician's role of bringing care and health to the sick and wounded.[153] The legal profession would be required to weigh in on such a situation.

As in all human activities, the proper conduct of interrogation operations is directly assured by the degree to which virtues are developed within the staff operatives. Just as "(T)he common good requires the development of the virtues in the mass of citizens . . ." even more does the physician require extensive development and practice in virtue.[154] A physician must not be forced to perform in opposition to his conscience (conscience must be governed by reason[155]), but likewise cannot shirk his responsibilities toward the vulnerable. Since the history of interrogations is stained with unsavory behavior, it would be best for leaders to insure the physicians they select willingly take part until the process gains the general trust of society through a history of upright conduct. It is all too easy to cause scandal when a latent possibility for malfeasance exists, thus besmirching the reputation of the physician, the profession, the

military, and the nation. Keeping this in mind, one may carefully approach such non-medical duties with confidence that one is filling an important and fitting role in benefiting the nation's security. "Military Medicine is a combination of the profession of medicine and the profession of arms. We believe it is an ethical and honorable profession."[156] It is the warrior spirit of willingness to fight disease, to bring healing wherever the need arises, and to promote human dignity at all times, in service to the individual and the nation.

Endnotes

[1] William Osler, "Chauvinism in Medicine", in *Aequanimatas, With other Addresses to Medical Students, Nurses and Practitioners of Medicine, Third Edition*, (Philadelphia, P. Blakiston's Son & Co., Inc., 1932), 267. "To prevent disease, to relieve suffering and to heal the sick – this is our work."

[2] Edmund D. Pelligrino, *Military Medical Ethics, Volume 1*, (Washington, D.C.: Borden Institute, Office of the Surgeon General United States Army, 2003), 12. "Thus when well persons become ill, by that very fact, they become patients – vulnerable, suggestible, and exploitable."

[3] Thomas J. Higgins, *Man as Man, The Science and Art of Ethics* (Rockford, IL, Tan Books and Publishers, Inc., 1992), 147.

[4] M. Gregg Bloche and Jonathan H. Marks, "When Doctors Go to War", New England Journal of Medicine, 6 Jan 2005, 352 (1), 3-6.

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[10] United Nations Office of the High Commissioner for Human Rights, "Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," General Assembly Resolution 3452 (XXX) adopted 9 December 1975; available from http://www.unhchr.ch/html/menu3/b/h_comp38.htm; Internet; accessed 12 January 2006.

[11] World Medical Association, "The World Medical Association International Code of Ethics," promulgated October 1949, revised October 2003, available at http://www.wma.net/e/policy/c8.htm; Internet; accessed 21 December 2005.

[12] World Medical Association, "The World Medical Association Regulations in Times of Armed Conflict," promulgated October 1956, revised 2004, Tokyo; available from http://www.wma.net/e/policy/a20.htm; Internet; accessed 21 December 2005.

[13] World Medical Association, "The World Medical Association Declaration of Tokyo. Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment," France, May 2005; available from http://www.wma.net/e/policy/c18.htm; Internet, accessed 21 December 2005. "[T]orture is defined as the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason." "1. The physician shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offense of which the victim of such procedures is suspected, accused or guilty, and whatever the victim's beliefs or motives, and in all situations, including armed conflict and civil strife." "5. Where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially. The decision as to the capacity of the prisoner to form such a judgment should be confirmed by at least one other independent physician. The consequences of the refusal of nourishment shall be explained by the physician to the prisoner."

[14] World Medical Association, "The World Medical Association Regulations in Times of Armed Conflict," promulgated October 1956, revised 2004, Tokyo; available from http://www.wma.net/e/policy/a20.htm; Internet; accessed 21 December 2005.

[15] World Organization of Family Doctors (Wonca), "Wonca Statement on Humanity", October 2004; linked from http://www.aafp.org/; available from http://www.aafp.org/x34341.xml; Internet; accessed 17 January 2006.

[16] American Psychological Association, "Report of the American Psychological Association Presidential Task Force on Psychological Ethics and National Security," June 2005, available from http://www.apa.org/releases/PENSTaskForceReportFinal.pdf; Internet; accessed 12 Jan 06.

[17] James R. Schlesinger et al., *Final Report of the Independent Panel to Review DOD Detention Operations*, Report to Secretary of Defense Donald Rumsfeld, 24 August 2004, 92

[18] Lester Martinez-Lopez, "Assessment for Detainee Medical Operations for OEF, GTMO, and OIF," memorandum for the Army Surgeon General, 13 April 2005; available from http://www.armymedicine.army.mil/news/detmedopsrprt/detmedopsrpt.pdf; Internet; accessed 27 January 2006, Exhibit D 26-10.

[19] Ibid, Exhibit D 26-11.

[20] Kevin C. Kiley, "Approval of Findings and Recommendations of Functional Assessment Team Concerning Detainee Medical Operations OEF, GTMO, and OIF," Memorandum For Record, Falls Church, VA, 24 May 2005, available from http://www.armymedicine.army.mil/ news/detmedopsrprt/detmedopsrpt.pdf; Internet; accessed 12 February 2006. This MFR forms the coversheet for reference #18 above, Martinez-Lopez.

[21] Albert T. Church, III, "Executive Summary," 25 May 2004, 20; available from http://www.defenselink.mil/news/Mar2005/d20050310exe.pdf; Internet; accessed 27 January 2006.

[22] Edward G. Longacre, "Joshua Chamberlain, The Soldier and the Man", Da Capo Press, Cambridge, MA, 1999, 295-312.

[23] Hippocrates, "Of the Epidemics," in *Hippocratic Writings*, trans. Francis Adams, in *The Great Books of the Western World*, ed. Mortimer J. Adler (Chicago, Encyclopedia Britannica, 1990), 96. (Book I, Section II, Paragraph 5) "The physician must be able to tell the antecedents, know the present, and foretell the future – must meditate these things, and have two special objects in view with regard to diseases, namely, *to do good or to do no harm* . The art consists of three things – the disease, the patient, and the physician. The physician is the servant of the art, and the patient must combat the disease along with the physician." (emphasis added) The phrase primum non nocere has come under recent criticism, as described in the article below. It is a Latin phrase, and Hippocrates spoke Greek. Thus, the origin is questioned. A number of scholars see the text quoted above as being the Hippocratic origin, further verified by the physician Galen, who commented upon the same as noted on page 97 of the text referenced here. The context of the quote references seasonal diseases and their diagnosis and management.

[24] Cedric M. Smith, "Origin and Uses of Primum Non Nocere – Above All, Do No Harm!," *The Journal of Clinical Pharmacology*, 2005; 45:371-377, [journal online]; available from http://jcp.sagepub.com/cgi/content/abstract/45/4/371; Internet; accessed 15 January 2006.

[25] Scott W. Hahn, "The Hippocratic Oath, A Covenantal Approach," (California: Saint Joseph Communications, Inc., 2004), electronic recording. Recording of a speech Dr. Hahn, Ph.D., gave to the Catholic Medical Society.

[26] Ibid.

[27] Scott W. Hahn, "Swear to God," (New York: Doubleday, 2004), 118-122.

[28] Ibid, 225.

[29] Ludwig Edelstein, "Ancient Medicine," (Baltimore: Johns Hopkins University Press, 1987), 6. English translation of the full Hippocratic Oath.

[30] Edmund Pellegrino, "The Moral Foundations of the Patient-Physician Relationship: The Essence of Medical Ethics," in "Military Medical Ethics, Volume 1," (Washington, D.C.: Borden Institute (and Office of the Surgeon General, United States Army, 2003), 12. Provides a brief summary of the covenantal relationship of the physician with the patient.

[31] Edelstein, 4, 62-63. "That for centuries the so-called Hippocratic Oath was the exemplar of medical etiquette and as such determined the professional attitude of generations of physicians, no one will doubt." " . . . the document originated in a group representing a small segment of Greek opinion." "As time went on, the Hippocratic Oath became the nucleus of all medical ethics. In all countries, in all epochs in which monotheism, in its purely religious or in its more secularized form, was the accepted creed, the Hippocratic Oath was applauded as the embodiment of truth."

[32] Specific words obligate only when the individual swears the Oath.

[33] Edmund D. Pelligrino, "Renewing Medicine's Basic Concepts," in *Health, Disease, and Illness*, (Washington, D.C., Georgetown University Press, 2004), xii.

[34] "Sir William Osler," linked from the Well Known Canadian's Page at http://particle.physics.ucdavis.edu/Canadians/scientists.html; available from http://particle.physics.ucdavis.edu/bios/Osler.html; Internet; accessed 31 January 2006.

[35] William Osler, "The Army Surgeon", in *Aequanimatas, With other Addresses to Medical Students, Nurses and Practitioners of Medicine, Third Edition*, (Philadelphia, P. Blakiston's Son & Co., Inc., 1932), 110.

[36] Ibid, "Chauvinism in Medicine", 266.

[37] Ibid, 268-269.

[38] Confraternity of Christian Doctrine, *"The New American Bible, Saint Joseph Personal Size Edition,"* (New York, Catholic Book Publishing Co., 1986), 807. (Sirach 38:1). Jesus, son of Eleazar, son of Sirach wrote a scroll of maxims while living in the Jerusalem community between 200 and 175 BC with a section of maxims governing behavior of physicians and the society's right attitude toward healing (Chapter 38).

[39] Thomas J. Higgins, *Man as Man, The Science and Art of Ethic, Revised Ed*., (TAN Books and Publishers, Inc., 1992), 520. This duty is viewed as a Natural Law obligation "commanding citizens to preserve the State". The civil state also has obligations to its citizens.

[40] Edmund D. Pelligrino, *Military Medical Ethics, Volume 1* , (Washington, D.C.: Borden Institute, Office of the Surgeon General United States Army, 2003), 11. "The most fundamental fact about medicine is that it exists because humans become ill. This and mortality are the two most universal characteristics of human existence. They transcend culture, history, and all other differences between and among humans."

[41] Osler, "The Army Surgeon", 111.

[42] Ibid. “Chauvinism in Medicine”, 267.

[43] M. Gregg Bloche and Jonathan H. Marks, “When Doctors Go to War”, New England Journal of Medicine, 6 Jan 2005, 352 (1), 4.

[44] Church, 19

[45] Ibid.

[46] Susan Okie, “Glimpses of Guantanamo – Medical Ethics and the War on Terror,” *New England Journal of Medicine* 353. no. 24 (15 December 2005), 2533, [journal on-line]; available from http://www.nejm.org; Internet; accessed 16 December 2005.

[47] Church, 19.

[48] Ibid.

[49] Lester Martinez-Lopez, “Assessment for Detainee Medical Operations for OEF, GTMO, and OIF,” memorandum for the Army Surgeon General, 13 April 2005; available from http://www.armymedicine.army.mil/news/detmedopsrprt/detmedopsrpt.pdf; Internet; accessed 27 January 2006, 1-6, 1-8.

[50] Jason Tudor, “Airmen provide exams before, after interrogations,” Air Force Link; available from http://www.af.mil/news/story.asp?storyID=123011123; Internet; accessed 12 February 2006.

[51] Dallas Hack, “Multi-National Force - Iraq Policy: Provision of Healthcare to Detainees,” Memorandum for All, Headquarters, Multi-national Force-Iraq, Baghdad, Iraq, APO, AE 09432-1409, 17 February 2005, 5. COL Hack, former command surgeon for Multi-National Force – Iraq (MNF-I), in private correspondence February, 2006, in his duties as professor at the US Army War College, described the Detainee Health Care Teams (Medical Safety Oversight Teams) in detail, correcting mistakes in the article by SPC Tudor. Detainee Health Care Teams did not perform medical care. The teams performed a safety role for detainees, insuring the well-being of all detainees on a routine basis, and notifying direct care personnel or facility leadership if there were any concerns.

[52] Ibid, 1-8.

[53] Okie, 2533.

[54] Martinez-Lopez, 1-7.

[55] Jonathan H. Marks, “The Silence of the Doctors”, 7 December 2005; available from http://www.thenation.com/docprem.mhtml?i+20051226&s=marks; Internet; accessed 21 December 2005.

[56] World Medical Association, “The World Medical Association Statement on Body Searches of Prisoners,” France, May 2005; available from http://www.wma.net/e/policy/b5.htm; Internet; accessed 21 December 2005.

[57] Dallas Hack, “Multi-National Force – Iraq Policy: Provision of Healthcare to Detainees,” Memorandum for All, Headquarters, Multi-national Force-Iraq, Baghdad, Iraq, APO, AE 09432-1409, 17 February 2005, 3,4. “Body Cavity Exams/Searches. Cavity exams and searches may conflict with the customs of some detainees. In take and routine medical exams will not include body cavity exams or hernia exams. Body cavity exams may be performed for valid medical reasons with the verbal consent of the patient. Body cavity searches may only be performed when there is a reasonable belief that the detainee is concealing an item that could present a security risk and must be authorized by the first general officer in the chain of command. To the extent possible, body cavity exams or searches will be conducted by trained personnel of the same gender and with the utmost respect for the detainee’s dignity and privacy (reference k).”

[58] Okie, 2530-2531.

[59] Numerous articles talk about this aspect, as well as the majority of references used in this paper.

[60] Joint Staff of Joint Chiefs of Staff, Joint Publication 3-63, 23 March 2005; available from http://hrw.org/campaigns/torture/jointdoctrine/jointdoctrine040705.pdf; Internet; accessed 12 Jan 06, I-1.

[61] George W. Bush, *National Security Strategy of the United States of America* , (Washington, D.C.: The White House, September 2002), 1.

[62] Ibid, iii.

[63] Ari Fleischer, “Statement by the Press Secretary on the Geneva Convention”, 7 February 2002, *Office of the Press Secretary*, available from http://www.state.gov/s/l/38727.htm; Internet; accessed 27 January 2007. “The war on terrorism is a war not envisaged when the Geneva Convention was signed in 1949. In this war, global terrorists transcend national boundaries and internationally target the innocent. The President has maintained the United States' commitment to the principles of the Geneva Convention, while recognizing that the Convention simply does not cover every situation in which people may be captured or detained by military forces, as we see in Afghanistan today.

“He arrived at a just, principled and practical solution to a difficult issue. The President did so because, as Americans, the way we treat people is a reflection of America's values. The military operates under a code of conduct that upholds these values, based on the dignity of every individual.

“What this announcement signifies is the President's dedication to the importance of the Geneva Convention and to the principles that the Geneva Convention holds. In terms of the treatment of the prisoners, even though the President has determined that they will not be treated legally as prisoners of war, they will be afforded every courtesy and every value that this nation applies to treating people well while they're in our custody. So it will not change their material life on a day-to-day basis; they will continue to be treated well because that's what the United States does.”

[64] Sherwood F. Moran, “Suggestions for Japanese Interpreters Based on Work in the Field,” (Fleet Marine Force, Fleet Post Office, San Francisco, CA, 17 July 1943, Restricted).

[65] U.S. Department of the Army, Law of War, Field Manual 27-10 (Washington, D.C.: U.S. Department of the Army, 18 July 1956, Change 1, 15 July 1976), Appendix A-24; available from http://www.afsc.army.mil/gc/files/FM27-10.pdf; Internet; accessed 27 January 2006. Chapter 3, Section IV, Paragraph 93 goes on to state, "Prisoners of War who refuse to answer, may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind." Paragraph 89 states, "Prisoners of war must at all times be humanely treated." "Likewise, prisoners of war must at all times be protected, particularly against all acts of violence or intimidation and against insults and public curiosity."

[66] Headquarters, Department of the Army, Intelligence Interrogation, Field Manual 34-52 (Washington, D.C.: U.S. Department of the Army, 28 September 1992), 1-6 to 1-7. Also available from https://atiam.train.army.mil/soldierPortal/atia/adlsc/view/public/6999-1/FM/34-52/FM34_52.PDF; Internet, accessed 14 January 2006.

[67] Ibid.

[68] Ibid, 1-8. GWS – Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949. GPW – Geneva Convention Relative to the Protection of Prisoners of War of August 12, 1949. GC – Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949. Pertinent excerpts from the full text which falls under the section "Prohibition Against the Use of Force" on the same page, clarify more fully to official position on interrogation techniques, "The GWS, GPW, GC, and US policy expressly prohibit acts of violence or intimidation, including physical or mental torture, threats, insults, or exposure to inhumane treatment as a means of or aid to interrogation.

"Such illegal acts are not authorized and will not be condoned by the US Army. Acts in violation of these prohibitions are criminal acts punishable under the UCMJ. If there is doubt as to the legality of a proposed form of interrogation not specifically authorized in this manual, the advice of the command judge advocate should be sought before using the method in question.

"Experience indicates that the use of prohibited techniques is not necessary to gain the cooperation of interrogation sources. Use of torture and other illegal methods is a poor technique that yields unreliable results, may damage subsequent collection efforts, and can induce the source to say what he thinks the interrogator wants to hear.

"Revelation of use of torture by US personnel will bring discredit upon the US and its armed forces while undermining domestic and international support for the war effort. It also may place US and allied personnel in enemy hands at a greater risk of abuse by their captors. Conversely, knowing the enemy has abused US and allied PWs does not justify using methods of interrogation specifically prohibited by the GWS, GPW, or GC and US policy. . .

"The psychological techniques and principles in this manual should neither be confused with, nor construed to be synonymous with, unauthorized techniques such as brainwashing, physical or mental torture, or any other form of mental coercion to include drugs that may induce lasting and permanent mental alteration and damage.

"Physical or mental torture and coercion revolve around eliminating the source's free will, and are expressly prohibited by GWS, Article 13; GPW, Articles 13 and 17; and GC, Articles 31 and 32. Torture is defined as the infliction of intense pain to body or mind to extract a confession or information, or for sadistic pleasure."

The article goes on to provide examples of physical and mental torture, and coercion, then outlines the punitive articles under the Uniformed Code of Military Justice (UCMJ) under which a violator may be prosecuted.

[69] FM 34-52, iv-v.

[70] Okie, 2532, 2533.

[71] Jerald M. Post (Ed.), *Military Studies in the Jihad Against the Tyrants, The Al-Quaeda Training Manual*, (Maxwell Air Force Base, Alabama, USAF Counterproliferation Center, August 2004), 13-19, 23, 25.

[72] Higgins, 520.

[73] Post, *The Al-Quaeda Training Manual*, 17, 23.

[74] Michael L. Gross, "Doctors in the Decent Society: Torture, Ill-Treatment and Civic Duty," *Bioethics* 18, No. 2, (November 2, 2004): 181-203. Michael Gross, holds a Ph.D. in political science and a M.A. in Philosophy. He is well published in ethics and holds a position as faculty at the Haifa University in Israel. See http://poli.haifa.ac.il/old_site/division_of_IR/Michael%20Gross.htm; accessed 13 Jan 06.

[75] George W. Bush, *National Security Strategy of the United States of America* , (Washington, D.C.: The White House, September 2002), iii, 3. Universal standards and inalienable rights – In his introductory comments, President Bush referenced "basic rights" and went on to state, "People everywhere want to be able to speak freely; choose who will govern them; worship as they please; educate their children – male and female; own property; and enjoy the benefits of their labor. These values of freedom are right and true for every person, in every society – and the duty of protecting these values against their enemies is the common calling of freedom-loving people across the globe and across the ages." ". . . the United States must defend liberty and justice because these principles are right and true for all people everywhere. No nation owns these aspirations, and no nation is exempt from them. Fathers and mothers in all societies want their children to be educated and live free from poverty and violence. No people on earth yearn to be oppressed, aspire to servitude, or eagerly await the midnight knock of the secret police." "America must stand firmly for the nonnegotiable demands of human dignity: the rule of law; limits on the absolute power of the state; free speech; freedom of worship; equal justice; respect for women; religious and ethnic tolerance; and respect for private property."

[76] ICRC, "Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field," Geneva, 12 August 1949; available from http://www.icrc.org/ihl.nsf/WebPrint/365-570006-ART?OpenDocument; Internet, accessed 12 January 2006.

[77] Definition – mutilation. Mutilation is the "disfigurement or injury by removal or destruction of a conspicuous or essential part of the body." The practice of amputation of the limb of a criminal described above could be condemned under the Conventions depending on the values extolled by the judge. *The American Heritage® Stedman's Medical Dictionary,* (Houghton Mifflin Company, 2002), linked from www.dictionary.com (http://dictionary.reference.com); available at http://dictionary.reference.com/search?q=mutilation; Internet; available 2 February 2006.

[78] ICRC, "Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)," 8 June 1977; http://www.icrc.org/ihl.nsf/WebPrint/475-760007-COM?OpenDocument; Internet; accessed 13 January 2006.

[79] ICRC, "States Party to the Geneva Conventions and Their Additional Protocols," 8 June 1977; available from http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/party_gc/$File/Conventions%20de%20Geneve%20et%20Protocoles%20additionnels%20ENG.pdf; Internet; accessed 13 January 2006.

[80] James R. Schlesinger et al., *Final Report of the Independent Panel to Review DOD Detention Operations*, Report to Secretary of Defense Donald Rumsfeld, 24 August 2004, Appendix H.

[81] John Paul II, "*The Splendor of Truth, Veritatis Splendor*", (Boston, St. Paul Books & Media, Boston, 6 August 1993), 91.

[82] Definition – Good – the metaphysical definition, which defines good as coterminus with being. It is the quality (verb or noun) that either supports perfection in the being itself toward that for which the being is made (the end – the perfect or absolute good). Higgins, 43-45.

[83] Definition – Act – the metaphysical definition, referring to Human Act. The common definition of Act – the process of doing or performing something. [The American Heritage Dictionary of the English Language, Fourth Edition, (Houghton Mifflin Company, 2000), linked from www.dictionary.com (http://dictionary.reference.com); available at http://dictionary.reference.com/search?q=act; Internet; accessed 2 February 2006.] The metaphysical definition of Human Act – a free (uninhibited/uncoerced), deliberate, and conscious movement of man's will toward an object of desire. Higgins, 31-34. Most of the acts with which this analysis is concerned involve the will linked to some intentional movement of the body.

[84] Definition – End – the metaphysical definition. The object of termination of a human act, and in an ultimate sense, that on account of which anything begins to exist. Ultimately, the end is the possession of the good sought. There are proximate ends, intermediate ends, and ultimate ends. It is first in the order of intent, and last in the order of execution. Higgins, 15.

[85] Higgins, 10. "Moral theology views man as destined to a supernatural end and bases its conclusions on both reason and revelation. Ethics prescinds from man's supernatural status and draws its conclusion from reason alone."

[86] Ibid, 42, 66.

[87] *The American Heritage® Dictionary of the English Language, Fourth Edition,* (Houghton Mifflin Company, 2000), linked from www.dictionary.com (http://dictionary.reference.com); available at http://dictionary.reference.com/search?q=teleology; available 11 February 2006. "2. The use of ultimate purpose or design as a means of explaining phenomena. 3. Belief in or the perception of purposeful development toward an end, as in nature or history."

[88] Higgins, 9,11.

[89] John Paul II, "*The Splendor of Truth, Veritatis Splendor*", (Boston, St. Paul Books & Media, Boston, 6 August 1993), 92-93. telos = ultimate end. "Consequently the moral life has an essential "*teleological" character*, since it consist in the deliberate ordering of acts to God, the supreme good and the ultimate end (telos) of man."

[90] David C. Thomasma, "Theories of Medical Ethics: The Philosophical Structure," in *Military Medical Ethics, Volume 1* , (Washington, D.C.: Borden Institute (and Office of the Surgeon General, United States Army, 2003), 28. Telos = goal. Ology = study.

[91] Higgins, 42. "Morality is the relation of the human act to man's absolute value."

[92] Ibid, 65-67.

[93] Ibid, 405-406.

[94] Isolated examples of depravity can be found in individuals and groups that never becomes the norm due to its contrary orientation to the good of individuals and society.

[95] Higgins, 119.

[96] John Paul II, 100-102.

[97] Higgins, 120. "All the precepts of the law are reducible to a single formula."

[98] Ibid, 122.

[99] Thomas Aquinas, The Summa Theologica (Chicago, Encyclopaedia Britannica, Inc., 1990), 222. This quote is taken from Part I (of two parts) of the Second Part (of three parts), Question 94 (XCIV), Article 2 "*I answer that* …" "Consequently the first principle in the practical reason is one founded on the notion of good, namely that the good is what all desire. Hence this is the first precept of law, that *good is to be pursued and done, and evil is to be avoided* . All other precepts of the natural law are based upon this, so that whatever the practical reason naturally apprehends as man's good belongs to the precepts of the natural law as something to be done or avoided." (Italics added)

[100] The Catholic Encyclopedia, Classic 1914 Edition, "Natural Law," linked from *New Advent* at "N," http://www.newadvent.org/ ; available from http://www.newadvent.org/cathen/ 09076a.htm; Internet, accessed 21 January 2006.

[101] Higgins, 441. Quotes John Locke, the philosopher upon whom the U.S. founding fathers sought much of their wisdom in establishing governance in the colonies.

[102]*Amendments to the Constitution, First through Tenth Amendments, Bill of Rights* , in *The Constitution of the United States of America, Analysis and Interpretation* , , prepared by Congressional Research Service, Library of Congress , co-ed. Johnny H. Killian, George A. Costello, and Kenneth R. Thomas, 108th Congress, 2nd Session (Washington D.C., U.S. Government Printing Office. 2004), Document 108-17, 1001; available from http://www.gpoaccess.gov/constitution/browse2002.html#2004; Internet; accessed 17 Jan 06.

[103] *The Declaration of Independence* , 4 July 1776; available from http://www.archives.gov/national-archives-experience/charters/declaration_transcript.html; Internet; accessed 17 January 2006. The Declaration clearly defines the natural law as central in the justification for the formation of our nation, and further outlines "unalienable rights" endowed by the Creator. "When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which *the Laws of Nature and of Nature's God entitle them* , a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation. We hold these truths to be self-evident, that all men are created equal, that they are *endowed by their Creator* with certain *unalienable Rights*, that among these are Life, Liberty and the pursuit of Happiness." (italics added)

[104] International Commission of the Red Cross (ICRC), "Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field," Geneva, 12 August 1949; available from http://www.icrc.org/ihl.nsf/COM/365-570071?OpenDocument; Internet; accessed 12 January 2006. "But the very nature of the Geneva Conventions demands a less academic and more humane interpretation. Everything points to the fact that we are not considering a number of different Conventions, but successive versions of one and the same Convention -- the Geneva Convention, whose principles are concepts of *natural law* and which merely gives expression to the *dictates of the universal conscience*." (italics added)

[105] Higgins, 126.

[106] Ibid, 119.

[107] John Paul II, 100-102. John Paul II, referencing the Second Vatican Council, categorizes intrinsically evil acts into three sets: whatever is hostile to life itself (homicide, genocide, abortion, euthanasia, voluntary suicide), whatever violates the integrity of the human person (mutilation, physical and mental torture, attempts to coerce the spirit), whatever is offensive to human dignity (subhuman living conditions), arbitrary imprisonment, deportation, slavery, prostitution and trafficking in women and children; degrading conditions of work which treat laborers as mere instruments of profit, and not as free responsible persons).

[108] *The New American Bible, Saint Joseph Personal Size Edition*, trans. Confraternity of Christian Doctrine (New York: Catholic Book Publishing Co., 1987), 79 (OT). (Exodus 21:23-25) "But if injury ensues, you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe." (See also Leviticus 24:20 and Matthew 5:38.)

[109] Ibid, 109 (NT). (Luke 6:31)

[110] Ibid, 78, 180 (OT). (Exodus 20:1-17, Deuteronomy 5:6-21)

[111] Definition – Happiness – the metaphysical definition (and differentiated from pleasure). The satisfaction of man's rational tendency toward an action (rational appetite) that secures some good. Complete/perfect happiness is the filling to capacity of this appetite. The consequence of the attainment of happiness is pleasure. Thus, happiness is the object (end) and pleasure is a consequence (i.e. an emotion). Happiness requires right action, and will always exist connaturally with pleasure. However, pleasure may be experienced from either

right or wrong action. Many authors confuse this distinction, resulting in an ethic of hedonism, or similar. Higgins, 17-21.

[112] Higgins, 19-26, 49-69, 133-134.

[113] Ibid.

[114] John Paul II, 90-104.

[115] Higgins, 55. "Since positivism is really repudiation of the human intellect . . ." "Positivism cannot remain a part of philosophy because it is denial of philosophy." This particular citation addresses moral positivism in all its forms specifically. A number of the theories mentioned fall into the category of moral positivism (pages 49-56 specifically address this).

[116] John Paul II, "*The Splendor of Truth, Veritatis Splendor*", (Boston, St. Paul Books & Media, Boston, 6 August 1993), 92-96.

[117] Higgins, 64-67. These pages provide an essential understanding of human nature. I will summarize salient points as follows.

What is Human Nature?

The essence of a being, considered as the source of its operations.[118]

Intrinsically, man is a composite of vegetative and sentient, and rational being. Vegetative refers to his mineral element, sentient to his brutish element, and rational to his divine element. The former two must be subordinated to the rational.[119]

Extrinsically, man is a contingent, social, and proprietary being. As contingent, he is not a cause unto himself. As social, he must be a part of a community (i.e. family) for his very survival. As proprietary, he must have domination over the irrational beings (plants, animals, and minerals), as they assist man toward attaining his end.[120]

All other beings (mineral, plant, and animal) have a purpose outside of themselves, for example, minerals to support all, plants to feed, and animals to work for man.[121] Man is the only animal sufficient unto himself, even though he still seems driven toward an end outside himself. He cannot himself be an end for God, since God receives no true good or utility from man.[122] However, since man did not cause himself, since his activities are oriented to defined goals, and since his appetites drive him to more than his own sustenance, he must, as part of his nature, be driven toward the Supreme Being, which in essence defines his ultimate good.[123]

"If, therefore, a human act disturbs any one of these relationships, it is unsuitable to human nature and bad."[124] To be morally good, the act must promote one of these relationships and at the same time not disturb any of the others. "The norm of morality is that to which we compare the human act to see if it helps or hinders man as man."[125] The standard of comparison must be the act that proceeds from man compared to how it fits with his nature as man, his human nature as it conforms to his end. Man's end is perfect happiness[126], a rational satisfaction of all his appetites in a way that does not seek more outside of that end, and must rationally conform with all aspects of man, intrinsic and extrinsic, i.e. his being as a composite, contingent, social,

and proprietary being. Thus, if his subjective happiness drives him to a deeper satisfaction apart from the object he has achieved, or detract from his life as a social being, or his life within the natural world, that happiness is inadequate and thus not complete within itself. They are only good if they continue to direct him to his ultimate good, done properly. Man's end as perfect happiness does not mean that man must be driven solely toward pleasure, i.e. hedonism.[127] Pleasure is an emotional feeling with a tendency toward slavery of oneself to ones drives (appetites) and others to oneself (using them as objects of satisfaction). Both examples detract from freedom, which at all times must be preserved.

[118] Ibid, 65.

[119] Ibid, 66.

[120] Ibid, 66.

[121] Ibid, 17.

[122] Ibid, 17.

[123] Ibid, 4-5, 14-19, 31.

[124] Ibid, 66.

[125] Ibid, 67.

[126] Ibid, 17.

[127] Ibid, 20, 59, 73.

[128] Ibid, 161.

[129] Ibid, 165.

[130] Ibid, 161.

[131] Ibid, 153.

[132] Ibid, 153-161.

[133] "Living the Army Values," linked from *The United States Army Home Page* at http://www.goarmy.com, search values; available from http://www.goarmy.com/life/living_the_army_values.jsp; Internet; accessed 6 February 2006. Army Values: loyalty, duty, respect, selfless service, honor, integrity, personal courage

[134] "Army Medicine Strategic Plan Core Values," available from the Center for Health Promotion and Preventive Medicine, Europe, (CHPPMEUR) Website at http://www.chppmeur.healthcare.hqusareur.army.mil/commander/commanders_ameddvalues.htm AMEDD; Internet; accessed 6 February 2006. Values: compassion, commitment, candor, competency.

[135] Higgins, 163.

[136] Douglas Carver, Carlisle Barracks National Prayer Breakfast, Letort View Community Center, U.S. Army War College, Carlisle Barracks, PA, 1 February 2006. Also referenced by David Hopkins, "War College Graduate Returns for National Prayer Breakfast," 2 February 2006, Banner Online, Public Affairs Office, U.S. Army War College, Carlisle Barracks, PA, available from http://www.carlisle.army.mil/banner/bannerarch.htm#prayer; Internet, accessed 6 February 2006. Chaplain (Brigadier General) Carver, Army Deputy Chief of Chaplains, chose sacrifice as his theme as a critical component to service in the military.

[137] Edmund Pellegrino, "The Moral Foundations of the Patient-Physician Relationship: The Essence of Medical Ethics," in *Military Medical Ethics, Volume 1* , (Washington, D.C.: Borden Institute (and Office of the Surgeon General, United States Army, 2003), 14-15. Provides a good summary of virtues of the health care professional.

[138] See quote of President Bush at beginning of this paper.

[139] Okie, 2532,2533.

[140] Definition – vulnerability. The susceptibility to physical or emotional injury. The American Heritage Dictionary of the English Language, Fourth Edition, (Houghton Mifflin Company, 2000), linked from www.dictionary.com (http://dictionary.reference.com); available at http://dictionary.reference.com/search?q=vulnerability; Internet; accessed 16 February 2006.

[141] Higgins, 549.

[142] Ibid, 554.

[143] Schlesinger et al., Appendix H.

[144] Ibid., Appendix G.

[145] Ibid., Appendix H.

[146] Ibid., Appendix H.

[147] Higgins, 77.

[148] Ibid, 338-339.

[149] Thomas E. Beam, "Preface," in *Military Medical Ethics, Volume 1* , (Washington, D.C.: Borden Institute (and Office of the Surgeon General, United States Army, 2003), xv.

[150] Jacques Maritain, *The Rights of Man and Natural Law*, trans. Doris C. Anson (New York, Gordian Press, 1971), 18.

[151] Schlesinger, 63.

[152] Ibid, Appendix G.

[153] ICRC, "Convention (III) relative to the Treatment of Prisoners of War," 12 August 1949, Article 33; available from http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6fef854a3517b75ac125641e004a9e68; Internet; accessed 15 January 2006.

[154] American Medical Association, *Code of Medical Ethics of the American Medical Association*, (Chicago, American Medical Association, May 1847), 98. "There is no profession, from the members of which greater purity of character, and a higher state of moral excellence, are required than the medical; and to attain such eminence, is a duty every physician owes alike to his profession, and to his patients."

[155] Higgins, 133.

[156] Thomas E. Beam, "Preface," in *Military Medical Ethics, Volume 1*, (Washington, D.C.: Borden Institute (and Office of the Surgeon General, United States Army, 2003), xvi.